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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/688,216	10/16/2000	KNUD ERIK BAEKGAARD	740119-98	8804

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EXAMINER

GRIER, LAURA A


ART UNIT

PAPER NUMBER

2644

DATE MAILED: 05/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/688,216	<b>Applicant(s)</b> BAEKGAARD ET AL.	
	<b>Examiner</b> Laura A Grier	<b>Art Unit</b> 2644	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☐ Responsive to communication(s) filed on \_\_\_\_.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-8, 11 and 12 is/are rejected.

7) ☒ Claim(s) 9, 10 and 13-20 is/are objected to.

8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All   b) ☐ Some \*   c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other:
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Art Unit: 2644

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claims 1, 3-8, 11-12** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 6-9 and 13-14 of U.S. Patent No.6134331. Although the conflicting claims are not identical, they are not patentably distinct from each other because both refer to an electronic stethoscope with digital filtering.

Regarding **claim 1**, U. S. Patent No. 6134331 (herein, '331), discloses in claims 1-2, lines 35-46, an electronic digital stethoscope that reads on the claimed electronic digital stethoscope.

Regarding **claim 3**, '331 in claim 4, lines 50-52, discloses a means for an A/B comparison, which reads on the claimed means for an A/B comparison.

Regarding **claim 4**, '331 in claim 6, lines 56-57, discloses multiple headphones, which reads on the claimed multiple headphones.

Regarding **claim 5**, '331 in claim 3, lines 47-48, discloses multiple impulse transfer functions, which reads on the claimed multiple impulse transfer functions.

Regarding **claim 6**, '331 in claim 7, lines 58-60, discloses the impulse transfer functions of the digital filter, which reads on the claimed impulse transfer functions of the digital filters.

Regarding **claim 7**, '331 in claim 8, lines 61-64, discloses digital pattern recognition means, which reads on the claimed digital pattern recognition.

Regarding **claim 8**, '331 in claim 9, lines 65-67, discloses digital pattern recognition means, which reads on the claimed digital pattern recognition for removing repetitive signals from the observed signal.

Regarding **claim 11**, '331 in claim 13, lines 9-11, discloses headphones arrangement, which reads on the claimed headphone arrangement.

Regarding **claim 12**, '331 in claim 14, lines 1-3, discloses compensation in respect to sensitivity of the particular ear, which reads on the claimed compensation.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1, 2 and 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomasson, U. S. Patent No. 5557681 in view of Harley, U. S. Patent 5610987.

Regarding **claim 1**, Thomasson discloses an electronic stethoscope with a microphone (vibration transducer), an amplifier, headphone, a filter for removing extraneous, particular

higher frequencies (col. 45-51). However, Thomasson fails to specifically disclose a digital filter. The examiner maintains such a digital filter was well known in the art.

Regarding a digital filter, in a similar field of endeavor, Harley discloses an active noise control stethoscope. Harley's disclose comprises stethoscope with a digital filter for generating a impulse response (col. 7, lines 5-27), which reads on an impulse transfer function.

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Thomasson by implementing a digital filter for the purpose of the providing a impulse response for reducing noise picked up and/or generated in or about the environment of a stethoscope.

Regarding **claim 2**, Thomasson and Harley disclose everything claimed as applied above (see claim 1). Thomasson disclose the frequency range (col. 5, lines 48—49). Wherein, such a frequency range for amplifying means is common in the art

Regarding **claim 6**, Thomasson and Harley (herein, Thomasson et al.) discloses everything claimed as applied above (see claim 1). Thus, the claimed limitations are rejected for the same reasons set forth in claim 1.

#### ***Allowable Subject Matter***

Claim9-10 and 13-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A Grier whose telephone number is (703) 306-4819. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

LAG *LAG*  
May 20, 2002

*[Signature]*  
FORESTER W. ISEN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

**Attachment for PTO-948 (Rev. 03/01, or earlier)**  
**6/18/01**

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes **incorporated** therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.